

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4273 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HAJI JAKARIA HAJI EBRAHIM

Versus

UNION OF INDIA

Appearance:

MR KAMAL M MEHTA for Petitioner

MR JAYANT PATEL for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 03/06/98

ORAL JUDGEMENT

Rule. Mr. Jayant Patel, learned Additional Standing Counsel appearing for the respondents waives service of rule. On the facts and in the circumstances of the case, the matter is taken up for final hearing today.

2. The petitioner running their industrial Unit prays for issuance of appropriate writ or directions restraining the respondents from resorting to coercive measures for the purpose of realisation of the excise duty which according to him is not legal. The petitioner

had received show cause notice to which he replied and submitted before the respondents that it would be illegal to compel him to make the payments of the excise duty, as in law, he is not liable to pay the same. However the respondent no.3 confirmed the demand and directed the petitioner to pay the amounts of excise duty. The petitioner, therefore, filed the appeal before the respondent no.2 and also filed the application for stay. Thereafter the petitioner requested often to hear the appeal and also dispose of the stay application at the earliest but unfortunately, the appeal is being delayed. Meanwhile, the respondent no.3 asked the petitioner to pay the amount of duty, failing which it is made clear that resorting to coercive measures, the amounts of excise duty shall be realised, with no option, therefore, the petitioner has preferred this application.

3. Ordinarily, no relief against the recovery of the amount of tax or Excise Duty can be granted and equitable order directing the party liable to pay the tax or duty should be passed, and the authority recovering the amount of tax should be directed to file the undertaking to the effect that in case, the petitioner succeeds, the amount of tax or duty realised shall be paid back within a period of three months without raising any dispute and that too with interest. In this case, however, such order cannot be passed because the Custom & Excise Department has issued the circular directing the authority whose duty is to recover the amount of excise duty, not to resort to coercive measures for realisation of the amount of excise duty, if the appeal filed by the party is pending and for staying operation of the confirmatory order, necessary application for interim stay is filed and the same is pending. In view of such direction by the Department, to which there is no dispute before me, in this case, appropriate relief is required to be granted, because in this case, the petitioner has filed an appeal along with the application for stay and the same is at present pending before the respondent no.2. In view of such fact, necessary direction is required to be issued.

4. For the aforesaid reason, the application is allowed. The respondent no.2 is directed to dispose of the application for stay preferred by the petitioner in appeal pending before him within one month from the date of this order. Till then, the respondents shall not resort to coercive measures for realisation of the amount. Rule accordingly made absolute with, with no order as to costs.

(ccs)